UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO. NA 94-88-C-D/H

AREL B. HAWKINS, EVA J.

HAWKINS, and TREASURER,

ORANGE COUNTY,

Defendants.

**ORDER OF AUGUST 7, 1995**

This matter comes before the Court on Plaintiff's motion for summary judgment, and the Court, having examined plaintiff's motion and supporting affidavit and being duly advised, now makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. This action was brought by the plaintiff against the defendants by way of complaint filed in the United States District Court for the Southern District of Indiana in the above captioned cause of

action.

2. The defendants, Arel B. Hawkins and Eva J. Hawkins, (hereinafter "Borrowers"), executed and delivered to the plaintiff promissory notes, copies of which are annexed as exhibits to plaintiff's complaint.

3. To secure said notes, the Borrowers executed and delivered to plaintiff mortgages upon certain real estate within the jurisdiction of this Court, and which were duly recorded, copies of said mortgages being annexed as exhibits to plaintiff's complaint.

4. That Borrowers filed for Chapter 11 Bankruptcy on June 13, 1983, however, the Chapter 11 Plan was dismissed July 29, 1987, with an effective date of dismissal of July 1, 987, prior to its consummation due to the Borrowers non-compliance with their plan.

5. That as of October 17, 1994, said Borrowers owed the plaintiff on said note an unpaid principal balance of $472,342.96, unpaid interest of $656,928.78, with interest accruing at the daily rate of $137.1166, for a total of $1,129,271.74 as of said date.

## CONCLUSION OF LAW

1. This Court has jurisdiction in this cause pursuant to 28 U.S.C. Section 1345.

2. The Borrowers are indebted to the plaintiff upon the aforesaid promissory notes, security for said notes being real estate mortgages upon certain real estate as described in plaintiff's complaint.

3. The Borrowers have defaulted upon the original agreement entered into with plaintiff.

4. Plaintiff is entitled to a judgment and to foreclose upon the notes and mortgages given by the Borrowers upon which the Borrowers have defaulted.

5. If necessary to support a judgment entered herein, any finding of fact shall be considered a conclusion of law, and any conclusion of law shall be considered a finding of fact.

By reason of the foregoing, plaintiff's motion for summary judgment is hereby granted.

It is so ORDERED.

Dated: 8/7/95

S/ S. Hugh Dillin

JUDGE, United States District Court

Southern District of Indiana

Distribution:

Gerald A. Coraz, Assistant United States Attorney
Office of the United States Attorney
5th Floor, United States Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

James C. Tucker
188 South Court Street
Paoli, IN 47454

Roger D. Davis
P. O. Box 193
Corydon, IN 47112

APPENDIX C 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

NEW ALBANY DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

NO. NA 94-88-C-D/H

AREL B. HAWKINS, EVA J.

HAWKINS, and TREASURER,

ORANGE COUNTY,

Defendants.

**JUDGMENT AND DECREE OF FORECLOSURE**

Comes now the United States of America, by Judith A. Stewart, United States Attorney, and it is shown to the satisfaction of the Court that the defendants, Arel B. Hawkins, Eva J. Hawkins, and Treasurer, Orange County, have been duly served, as more fully appears from the return of service filed herein;

And it further appearing that the defendants, Arel B. Hawkins, Eva J. Hawkins, and the Treasurer, Orange County, files their Answers in this cause;

And it further appearing that the attorney for the United States has filed an affidavit showing that he has caused an investigation to be made for the purpose of ascertaining if the defendants, Arel B.

Hawkins and Eva J. Hawkins, are in the military service and that upon information and belief, he believes that they are not in the military service of the United States, and this Court being duly advised;

The Court now FINDS that the defendants are wholly in default and that the complaint is taken as confessed as true.

The Court further FINDS:

1. That each and every material allegation of the plaintiff's complaint is true in substance and in fact and that the plaintiff is entitled to the relief therein prayed for.

2. That the defendants, Arel B. Hawkins and Eva J. Hawkins, are not in the military service of the United States.

3. That there is now due the plaintiff from the defendants, Arel B. Hawkins and Eva J. Hawkins, upon the notes sued on in the plaintiff's complaint, the principal sum of $472,342.96, plus interest in the amount of $656,928., accrued through October 17, 1994, with interest thereon at the rate of $137.1166 per day, cost of the title search in the sum of $60.00, all of such sums to be without relief from valuation and appraisement laws.

4. That said sums are secured by the mortgage described in the plaintiff's complaint, and that said mortgage is a first and prior lien upon said real estate to the extent of said sum, and that the plaintiff is entitled to have its mortgage foreclosed against the property described in plaintiff's complaint.

5. That Borrowers filed for Chapter 11

foregoing judgment with all interest thereon, shall be paid to the Clerk of this Court for the benefit of the persons lawfully entitled thereto and authorized to receive same.

That if the proceeds of the sale are insufficient to satisfy the amount due the plaintiff, that a personal money judgment for the deficiency be entered against the defendants, Arel B. Hawkins and Eva J. Hawkins, in favor of the United States of America.

4. That the United States Marshal or auctioneer in cases involving personal property, upon consummation of said sale, place the purchaser of said real estate and/or personal property in immediate possession thereof.

DATED: 8/7/95

S/ S. HUGH DILLIN

JUDGE, United States District Court

Southern District of Indiana

cc:

Gerald A. Coraz, Assistant United States Attorney
Office of the United States Attorney
5th Floor, United States Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204
James C. Tucker
188 South Court Street
Paoli, IN 47454
Roger D. Davis
P. O. Box 193
Corydon, IN 47112

ATTACHMENT "A"

The southwest quarter of section eight (8), township one (1) north, range one (1) east, except therefrom forty (40) acres of equal width off the west side thereof, containing 120 acres, more or less.

A part of the southeast quarter of section 8, township 1 north, range 1 east described as follows, to-wit: Commencing one (1) rod south of the northwest corner of the southeast quarter of said section eight (8), running thence east six and thirty-two hundredths (6.32) rods to a stone, thence south twelve and sixty-four hundredths (12.64) rods to a stone, thence west six and thirty-two hundredths (6.32) rods to the west line of said southeast quarter of said section eight (8), thence north twelve and sixty-four hundredths (12.64) rods to the place of beginning, containing .5 acre, more or less.

A part of the northwest quarter of section 8, township 1 north, range 1 east described as follows, to-wit: Commencing at the southeast corner of said quarter section, running thence west 66.81 rods, thence north to the center of Lick Creek which runs through said quarter section, thence southeasterly

with the meanderings of said Lick Creek to a point where the center of said creek is 209 feet north and 850 feet west of the southeast corner of said northwest quarter of said section 8, thence east 850 feet to the east line of said northwest quarter of section 8, thence south to the place of beginning.

A part of the northwest quarter of section 8, township 1 north, range 1 east, Paoli Township, Orange County, Indiana. Beginning at a corner that is 640 feet north of, and 320 feet west of the southeast corner of said northwest quarter; thence northwesterly 600 feet, more or less, along a line parallel with U.S. Highway #150 to a property corner at Lick Creek (Deed Record 120, pages 364, 365 and 367), thence northerly 22 rods to the center of U.S. Highway #150, passing the south right-of-way line at 323 feet, more or less, thence southeasterly 650 feet, more or less, along said highway, thence southwesterly at right angles to said highway 390 feet to the point of beginning, (passing said south right-of-way line at 40 feet).

Containing 5.02 acres, more or less.

Subject to an actual land survey. Data compiled from deed records and Air-Photo #QZ-1HH-128.

Prepared by Bruce W. Atkinson, LS. Ind. Reg. Cert. No. 11230. May 14, 1979.

Also, all that part of the northeast quarter of section seven (7) in township one (1) north, range one (1)

east which lies west of the Cloud Mill Road, bounded as follows, to-wit: Beginning at a point where the said road crosses the south line of said quarter section 39 rods west of the southeast corner thereof; thence north along the center of said road to the north line of said quarter; thence west with said line to the northwest corner of said quarter; thence south along the west line of said quarter to the southwest corner thereof; thence east along the south line of said quarter to the place of beginning, containing 98 acres, more or less.

EXCEPT THEREFROM: Beginning at the northwest corner of said northeast quarter, thence east 1200 feet more or less along the section line to Cloud Mill Road (Belle Ford Road), thence south 450 feet along said road, thence west 1150 feet more or less parallel to the section line, to the west line of said quarter, thence north 448 feet more or less along said quarter line to the point of beginning, containing 12 acres, more or less.

Also, a part of the northeast quarter of said section seven (7), township one (1) north, range one (1) east, bounded and described as follows, to-wit: Beginning at the southeast corner of said quarter section, running thence west thirty-nine (39) rods to a stone marked "39" in the center of the old Cloud Mill Road; thence north with the meanderings of said road 10-2/3 degrees west 9.16 rods, thence north 35-3/4 degrees west 11.28 rods; thence north 43-3/4 degrees west 22.24 rods, thence north 47 degrees west 11.60 rods, thence north 19 degrees

west 38 rods, thence north 20 degrees west 20.74 rods, thence north 02 degrees west 15.40 rods, thence north 07-1/2 degrees east 23.12 rods to a stone, thence east 8 rods to the center of Lick Creek, thence up said creek with the meanders thereof to the east line of said quarter section, thence south along said line to the place of beginning, containing forty-one (41) acres, more or less.

Containing one hundred twenty-seven (127) acres, more or less.

Commonly known as: Route 2, Paoli, IN 47454

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA
PLAINTIFF
V NO.
NA94-88-C-D/H
AREL B. HAWKINS, ET AL.,
DEFENDANTS

ORDER CONFIRMING SALE AND
DEFICIENCY JUDGMENT

Comes now the plaintiff United States of America and files its motion to confirm sales, of the property in the above captioned cause.

It appears that the United States Marshal for the southern District of Indiana has duly filed his Affidavit of Publication and Report of Sale in proper form.

No, therefore, it is ordered and adjudged that the sale of the following described real estate to "Hill country" Farms, IN., by the United States

Marshal for the southern District of Indiana, for the sum of $167,000.00, constituting a credit on the indebtedness previously found due under the decree entered by this court on August 7, 1995, in the above entitled cause, be and hereby is approved; and the United States Marshal is authorized to execute to said purchaser a Marshal's Deed to said real estate in the proper form. Said real estate is located in the county of Orange, State of Indiana, to wit: The southwest quarter of section eight(8), township one(1) north, range one (1) east, except therefrom forty (40) acres of equal width off the west side thereof, containing 120 acres, more or less.

A part of the southeast quarter of section 8, township 1 north, range 1 east described as follows, to wit: Commencing one (1) rod south of the northwest corner of the southeast quarter of said section eight (8), running thence east six and thirty-two hundredths (6.32) rods to a stone, thence south twelve and sixty-four hundredths (12.64) rods to a stone, thence west six and thirty-two hundredths (6.32) rods to the west line of said southeast quarter of said section eight (8), thence north twelve and sixty-four hundredths (12.64) rods to the place of beginning, containing .5 acre, more or less.

A part of the northwest quarter of section 8, township 1 north, range 1 east described as follows, to wit: Commencing at the southeast corner of said quarter section, running thence west 66.31 rods, thence north to the center of Lick Creek which runs through said quarter section, thence southeasterly

with the meanderings of said Lick Creek to a point where the center of said creek is 209 feet north and 850 feet west of the southeast corner of said northwest quarter of said section 8, thence east 850 feet tot he east line of said northwest quarter of section 8, thence south to the place of beginning.

A part of the northwest quarter of Section 8, Township 1 North, Range 1 East, Paoli Township, Orange County, Indiana. Beginning at a corner that is 640 feet north of, and 320 feet west of the southeast corner of said northwest quarter; thence northwesterly 600 feet, more or less, along a line parallel with U.S. Highway #150 to a property corner at Lick Creek (Deed Record 120, pages 364, 365, 367), thence northerly 22 rods to the center of U.S. Highway #150, passing the south right-of-way line at 323 feet, more or less, thence southeasterly 650 feet, more or less, along said highway, thence southwesterly at right angles to said highway 390 feet to the point of beginning, (passing said south right-of-way line at 40 feet).

Containing 5.02 acres, more or less.
Subject to an actual land survey. Data compiled form deed records and Air-Photo #QZ-1HH-128. Prepared by Bruce W. Atkinson, LS. Ind. Reg. Cert. No. 11230. May 14, 1979.

Also, all that part of the northeast quarter of section seven (7) in township one (1) north, range one (1) east which lies west of the Cloud Mill road, bounded as follows, to wit: Beginning at a point

where the said road crosses the south line of said quarter section 39 rods west of the southeast corner thereof; thence north along the center of said road to the North line of said quarter; thence west with said line to the northwest corner of said quarter; thence south along the west line of said quarter to the southwest corner thereof; thence east along the south line of said quarter to the place of beginning, containing 98 acres more or less.

Except therefrom: Beginning at the northwest corner of said northeast quarter, thence east 1200 feet more or less along the section line to Cloud Mill Road (Belle Ford Road), thence south 450 feet along said road, thence west 1150 feet more or less parallel to the section line, to the west line of said quarter, thence north 448 feet more or less along said quarter line to the point of beginning, containing 12 acres, more or less.

Also, a part of the northeast quarter of said section seven (7), township one (1) north, range (1) east, bounded and described as follows, to wit: beginning at the southeast corner of said quarter section, running thence west thirty-nine (39) rods to a stone marked "39" in the center of the old Cloud Mill Road; thence north with the meanderings of said road 10-2/3 west 9.16 rods, thence north 35 3/4 west 11.28 rods; thence north 43 3/4 west 22.24 rods, thence north 47 west 11.60 rods, thence north 19 west 38 rods, thence north 20 west 20.74 rods, thence north 02 west 15.40 rods, thence north 07-1/2 east 23.12 rods to a stone, thence east 8 rods to

the center of Lick Creek, thence up said creek with the meanders thereof to the East line of said quarter section, thence south along said line to the place of beginning, containing forty-one (41) acres, more or less.

Containing one hundred twenty-seven (127) acres, more or less.

Commonly known as: route 2, Paoli, IN 47454

It is further ordered that the Clerk shall retain the sum of $140.00 for payment of filing and docketing fees in this action.

It is further ordered that the Clerk shall disburse the sum of $60.00 to the United States Marshal's Service for Marshal's costs; and $166,800.00 to the United States of America, checks to be delivered to the United States Attorney for forwarding.

It is further ordered by the court that the judgment of this court dated August 7, 1995, in this cause is satisfied in part by virtue of the $166,800.00 payment made upon said sale, and that a deficiency exists on said judgment against the defendants, Arel B. Hawkins and Eva J. Hawkins, in the sum of $1,169,644.02, which amount represents the unsatisfied portion of the judgment, including costs and expenses accruing after the date of the judgment. Plaintiff herein shall have a personal money judgment against the defendants, Arel B. Hawkins and Eva J Hawkins, for said

deficiency in the sum of $1,002,844.02, plus interest at the rate of 5.7% per annum until paid.

Dated: January 5, 1996

Judge, United States District Court

Southern District of Indiana

Copy to:
Kathy Short, Financial Clerk
U.S. Marshal's Service
Gerald A. Coraz, Asst US Atty

Arel B Hawkins
Route #2
Box 55
Paoli, IN 47454

Eva J Hawkins
Route #2
Box 55
Paoli, IN 47454

James C Tucker
Tucker & Tucker
188 South Court Street
Paoli, IN 47454

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PETITIONER,

V NO NA
94-88-C-D/H
AREL B. HAWKINS ET AL.,
RESPONDENTS

APPLICATION FOR ORDER TO SHOW CAUSE WHY AREL B. HAWKINS AND EVA J. HAWKINS SHOULD NOT BE HELD IN CONTEMPT

Comes now the United States of America, by counsel, Judith A. Stewart, United States Attorney, and Marsha C.Massey, Assistant United States Attorney, and states that this cause of action is brought pursuant to the provisions of 18 U.S.C. 401, and shows to the court:

1. Petitioner is the plaintiff in the above-entitled cause.

2. On March 28, 1996, a Writ of Ejectment was issued by this court in the above-entitled cause. This writ was served by certified mail upon the following persons: Arel B. Hawkins on March 30, 1996; Eva J. Hawkins on March 30, 1996; and Perry Hawkins on April 3, 1996, and ordered them to vacate the real property and to surrender personal property, as more fully appears from a copy of the Writ of Ejectment and the affidavit of service, attached and marked "Exhibit A."

3. The order to this court has been in full force and effect since its entry.

4. During the period March 30, 1996, through the present, respondents, Arel B. Hawkins and Eva J. Hawkins have failed and refused to

comply with and have disobeyed and disregarded the provisions of the Writ of Ejectment issued by this Court on March 28, 1996. On information and belief, it is alleged that Arel B. Hawkins and Eva J. Hawkins have violated the Writ of Ejectment by continuing to reside on the premises and have not surrendered said personal property to the Farmers Home Administration. Petitioner has been informed that Perry Hawkins had complied with the Writ of Ejectment and has vacated the premises as ordered.

5. On information and belief, it is alleged that these violations are continuing and will continue without the intervention of this court.

6. By reason of the failure and refusal of Arel B. Hawkins and Eva J. Hawkins to comply with provisions of the Court's Writ of Ejectment dated March 28, 1996, they have displayed criminal contempt of the authority of this Court by willfully violating an order of reasonable specificity. See, 18 U.S.C. 401(3); Matter of Betts, 927 F.2d 983 (7th Cir. 1991) (criminal contempt appropriate to punish violator for willful violation of court order).

7. By reason of the failure and refusal of Arel B. Hawkins and Eva J. Hawkins to comply with the provisions of the Court's Writ of Ejectment dated March 28, 1996, they should be held in civil contempt unless and until they comply with that March 28, 1996 court order. See Stotler and Co. V. Able, 870 F.2d 1158, 1163 (7th Cir. 1989) (civil contempt appropriate to coerce compliance with court order).

Wherefore, petitioner prays that this court

issue an Order upon Arel B. Hawkins and Eva J. Hawkins requiring them to appear before this Court at the earliest possible date to show cause, if any they have, why they should not be held in criminal and civil contempt of this Court for having violated and disregarded the terms of the Writ of Ejectment.

Respectfully submitted,

JUDITH A. STEWART
UNITED STATES ATTORNEY

Marsha C. Massey
Assistant United States Attorney

United States Attorney
Assistant United States Attorney
Office of the United States Attorney
5th Floor, United States Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

UNITED STATES DISTRICTCOURT
SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA
PETITIONER,

SUBPOENA IN A

V

CRIMINAL CASE
AREL B HAWKINS, ET AL.
RESPONDENTS.

CASE NUMBER:NA94-88-C-D/H

TO:
AREL B HAWKINS
ROUTE 2
PAOLI, IN 47454

You are commanded to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

Place
Courtroom
United States District Courthouse 243
46 East Ohio Street
Indianapolis, Indiana Date and
Time

April 29, 1996 at 9:30 AM

You are also commanded to bring with you the following documents or objects:

US Magistrate Judge or Clerk of Court Date

4/23/96

by Deputy Clerk

Marsha C. Massey, Assistant U.S. Attorney, Office of the U.S. Attorney,
5th floor, U.S. Courthouse, 46 East Ohio Street,
Indianapolis, IN 46204
Phone: 317-226-6333

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,
PLAINTIFF,
V.
CAUSE NO. NA 94-88-C D/H
AREL B. HAWKINS AND
EVA J. HAWKINS,
DEFENDANTS
ABSTRACT OF JUDGMENT
NOTICE

Pursuant to Title 28, United States Code, Section 3201, this judgment, upon the filing of this abstract in the manner in which a Notice of tax (lien would be filed under paragraphs (1) and (2) of 26, U.S.C. 6323(f), creates a lien on all real property of the defendant(s) and has priority over all other liens or encumbrances which are perfected later in time. The lien created by this section is effective, unless satisfied, for a period of 20 years and my be renewed by filing a Notice of renewal. If such Notice of renewal is filed before the expiration of the 20 year period to prevent the expiration of the lien and the court approves the renewal, the lien shall relate back to the date the judgment is filed.

Names and Addresses of Parties against whom judgments have been obtained:

Arel B and Eva J Hawkins

Route 2
Paoli, IN 47454

Names of parties in whose favor judgment have been obtained:

United Stated of America

Amount of Judgment: $1,129,331.74 plus interest at 5.7% per annum

Names of Creditors Attorneys: When Docketed: August 9, 1995
Judith A. Stewart
United States Attorney
By: Marsha C. Massey, AUSA
U S Courthouse, 5th Floor
46 East Ohio Street
Indianapolis, IN 46204

United States of America, Clerks Office
U S District Court for the

Southern District of Indiana

I certify that the foregoing is a correct Abstract of the judgment entered or registered by this court.

Dated: October 2, 1995
Geraldine Treutelaar Crockett, Clerk
By Kathleen Kochert, Deputy Clerk